1. GENERAL

1.1 These General Terms and Conditions of Sale ("Conditions") govern the offering, sale and delivery of DSM Nutritional Products products (hereinafter referred to as the "Products") from or on behalf of DSM Nutritional Products S.A., located at Estrada 7799 - 12000 - Montevideo, Uruguay ("DSM"), to customer ("Customer") and apply to all communication, agreements and understandings of the parties, independently of any further terms of prior oral or written quotations, communications, agreements and understandings of the parties. Unless the parties have agreed otherwise, the Products shall apply in preference to and supersede any terms and conditions of any contract or order placed by Customer and any other terms and conditions submitted by Customer. Failure by DSM to object to any such terms and conditions shall no way constitute an acceptance of any of the terms and conditions of Customer. Neither DSM’s commencement of performance nor DSM’s delivery shall be deemed as acceptance by DSM of Customer’s terms and conditions made by Customer in any communication or agreement of whatever form. If any material terms of the Conditions differ from any of the terms and conditions of Customer, the Conditions and any subsequent communication or conduct by or on behalf of DSM, including, without limitation, communications, agreements and understandings of the parties, and/or any of the Products, constitute a counter-offer and not acceptance of such terms and conditions, unless otherwise agreed by Customer. Any communication or conduct of Customer which confirms an agreement for the delivery of Products by DSM shall not be regarded as or be interpreted as an acceptance of any delivery of Products from DSM shall constitute an unequivocal acceptance by Customer of the Conditions.

1.2 The current version of the Conditions is available on DSM’s website at http://www.dsm.com/US/en/ourContracts_onUGen.html. DSM reserves the right to modify the Conditions at any time. DSM will notify Customer of any such amendments by sending the amended Conditions to Customer by registered mail or by placing them on the aforementioned Internet sites or otherwise. The amended Conditions will take effect on the date of notification of these amendments. The amended Conditions and any prior version thereof may apply in respect of orders concluded between Customer and DSM after the date of such notification.

1.3 Customer's acceptance of DSM's quotation and Customer shall be effective as originally and shall be considered to be a "writing to the parties". The electronic message or e-mail sent by DSM shall serve as sole proof for the content and the time of such delivery of such electronic communications.

2. QUOTATIONS, ORDERS AND CONFIRMATION

2.1 Unless stated otherwise by DSM, quotations made by DSM are not binding on DSM and must be confirmed by Customer and accepted by DSM in writing. Customer shall be entitled to refuse an order without indicating the reasons. Unless stated otherwise by DSM, all quotations are subject to stock availability and technical specifications are subject to change without notice. Orders are not binding until accepted by DSM in writing. All additional terms and conditions of any order by Customer and shall be either added to each invoice or separately confirmed by Customer and accepted by DSM. If no acceptance is given within the 5 days following the date of DSM’s invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or other counterclaims except in set-off or counterclaim of any enforceable counterclaims.

2.2 With regard to the delivery of the Products, time is of the essence. DSM may, without prejudice to any other rights of DSM, charge interest on any overdue payment at an interest rate equal to the Uruguayan Law per annum from the due date consequently for the delayed payment until and unless and any amounts are paid in full. All costs and incurred expense by DSM in respect to the collection of overdue payments (including, without limitation, reasonable attorney’s fees, expert fees, court costs and any other expenses of litigation) shall be for Customer’s account.

2.3 In case of late delivery, Customer must be notified by DSM in writing within 10 (ten) days after the date of delivery. Customer shall be entitled to terminate the Order in the case of such late delivery.

3. PRICES

3.1 Prices and currencies of DSM’s Products are as set out in the Confirmed Order. Unless otherwise agreed, DSM’s prices include standard packaging but do not include (i) taxes, duties, levies or charges in any jurisdiction; (ii) delivery charges; (iii) any freight costs related to delivery thereof ("Taxes"). The amount of any Taxes levied in connection with the sale of Products to Customer is not included in the price and shall be borne by Customer and shall be either added to each invoice or separately confirmed by DSM and accepted by Customer. If no acceptance is given within the 5 days following the date of delivery ("Taxes"), any Taxes levied in connection with the sale of Products to Customer is not included in the price and shall be borne by Customer and shall be either added to each invoice or separately confirmed by DSM and accepted by Customer. If no acceptance is given within the 5 days following the date of delivery, the 5% (fifty percent) of the price for the Products as quoted in the Confirmed Order shall be regarded as a liquidated damages unless Customer can demonstrate that the actual damages incurred by DSM are lower than the 50% (fifty percent) of the price or were not suffered at all.

4. PAYMENT AND CUSTOMER’S CREDIT

4.1 Unless stated otherwise in the Confirmed Order, payment shall be made on the basis of net cash; unless agreed otherwise by DSM, by Customer shall be made within 30 (thirty) days following the date of DSM’s invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or other counterclaims except in set-off or counterclaim of any enforceable counterclaims.

5. PERFORMANCE AND DELIVERY

5.1 DSM reserves the right on delivery of the Products, time is of the essence. DSM may, without prejudice to any other rights of DSM, charge interest on any overdue payment at an interest rate equal to the Uruguayan Law per annum from the due date consequently for the delayed payment until and unless and any amounts are paid in full. All costs and incurred expense by DSM in respect to the collection of overdue payments (including, without limitation, reasonable attorney’s fees, expert fees, court costs and any other expenses of litigation) shall be for Customer’s account.

5.2 DSM reserves the right to make any delivery of such increase in production runs in which the Products are produced in accordance with the methods of manufacture as DSM may consider necessary, and in any case of shortage of utilities, energy, products obtained by DSM from third parties, governmental charges, contributions, governmental charges, freight costs and insurance premiums. DSM shall notify Customer of such change in method of manufacture or any other factor likely to exceed the increase in the determining factors.
acknowledges that data in DSM’s catalogues, product data sheets and other descriptive publications distributed or published on its websites may accordingly be varied from time to time without notice.

13.2. Customer must utilise and solely rely on its own expertise, know-how and judgment in relation to the Products and Customer’s use thereof. Consultation provided by DSM shall not give rise to any additional obligations. Customer shall indemnify and hold DSM harmless from and against any and all damages, losses, costs, expenses, claims, demands and liabilities (including without limitation product liabilities) arising out of or in connection with the Products and Customer’s use thereof.

13. COMPLIANCE WITH LAWS AND STANDARDS
13.1. Customer acknowledges that the Use of the Products may be subject to requirements or limitations under any law, statute, ordinance, rule, code or standard, including, but not limited to, all applicable regulations relating to (i) anti-bribery and anti-corruption and (ii) international trade, such as, but not limited to, embargoes, import and export control and sanctioned party lists (“Laws and Standards”).

13.2. Customer expressly warrants that employees, agents and subcontractors of the Customer shall not directly or indirectly (i) accept, promise, offer or provide any improper advantage to or (ii) enter into an agreement (a) with any entity or person including officials of a government or a government-controlled entity -, or (b) relating to a product, which would constitute an offence or infringement of applicable Laws and Standards.

13.3. Customer shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with its intended Use of the Products; and (ii) obtaining all necessary approvals, permits or clearances for such Use.

14. INDEPENDENT CONTRACTORS
DSM and Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal and agent.

15. NON-ASSIGNMENT AND CHANGE OF CONTROL
15.1. Neither party may assign any of the rights or obligations under the Confirmed Order without the prior written consent of the other party, except that either party may assign such rights and obligations to any of its affiliates or to a third party acquiring all or a substantial part of its assets or business relating to the Products.

15.2. DSM shall have the right to terminate the Confirmed Order with immediate effect if at any time during the term of the Confirmed Order a person or group of persons, who are unrelated to the persons controlling Customer as of the date of the Confirmed Order, acquires control, through ownership of voting securities or otherwise, over Customer. Customer shall immediately notify DSM of such acquisition within 10 (ten) days thereof. DSM may exercise its right to terminate the Confirmed Order by giving written notice of such exercise within 10 (ten) days after the date of receipt of such notice.

16. SUSPENSION AND TERMINATION
16.1. If Customer is in default of performance of its obligations towards DSM and fails to provide to DSM adequate assurance of Customer’s performance before the date of scheduled delivery; or if Customer becomes insolvent or unable to pay its debts as they become due and liable to liquidation (other than for the purpose of a reconstruction or amalgamation); or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; or in case of non-compliance of Customer with Laws and Standards, then DSM may by notice in writing forthwith, without prejudice to any of its other rights:
   (i) demand repayment and take repossess of any delivered Products which have not been paid for and all costs relating to the recovery of the Products shall be for the account of Customer; and/or
   (ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products unless Customer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment for Products to DSM.

16.2. In any such event of Article 16.1. all outstanding claims of DSM shall become due and payable immediately with respect to the Products delivered to Customer and not reposessed by DSM.

18. SEVERABILITY AND CONVERSION
In the event that any provision of the Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity and enforceability of the remaining provisions between the parties and shall be severed therefrom. The pertaining provisions held to be invalid or unenforceable shall be reformed to meet the legal and economic intent of the original provisions to the maximum extent permitted by law.

19. LIMITATION OF ACTION
Under otherwise stated hereunder, no action by Customer shall be brought unless Customer first provides written notice to DSM of any claim alleged to exist against DSM within 30 (thirty) days after the event complained of first becomes known to Customer and an action is commenced by Customer within 12 (twelve) months after such notice.

20. GOVERNING LAW AND VENUE
20.1. The parties’ rights and obligations arising out of or in connection with the Confirmed Order and/or the Conditions shall be governed, construed, interpreted and enforced according to the laws of Uruguay, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall not apply.

20.2. The parties agree that any suits, actions or proceedings that may be instituted by any party shall be initiated exclusively before the competent courts of the City of Montevideo, without restricting any rights of appeal and without prejudice to DSM’s right to submit the matter to any other competent court.

21. SURVIVAL OF RIGHTS
The parties’ rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the parties’ rights and obligations, for whatever reason, shall not affect those provisions of the Conditions which are intended to remain in effect after such termination.

22. HEADINGS
The headings contained in the Conditions are included for mere convenience of reference and shall not affect the latter’s construction or interpretation.

23. INTELLECTUAL PROPERTY
23.1. All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of DSM.

23.2. DSM has not verified the existence of third party intellectual or industrial property rights that might be infringed as a consequence of the sale and/or delivery of the Products and DSM shall not be held liable for any loss or damage in that respect.

23.3. The sale of Products shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the Products, and Customer expressly assumes all risks of any intellectual property infringement by reason of the use of the Products, whether singly or in combination with other materials or in any processing operation.

24. LANGUAGE
The original version of the Conditions is made in the English language. In the event of any inconsistency or contradiction between the English version and the Spanish translation thereof, the Spanish version shall prevail.